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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. Francisco AVILA-Graciano, Defendant.	Mag. Case No. '08 MJ 8179 COMPLAINT FOR VIOLATION OF Title 8, U.S.C., Section 1326 Deported Alien Found In the United States

The undersigned complainant being duly sworn states:

On or about February 25, 2008, within the Southern District of California, defendant Francisco AVILA-Graciano, an alien, who previously had been excluded, deported or removed from the United States to Mexico was found in the United States, without the Attorney General of the United States or his designated successor, the Secretary of the Department of Homeland Security (Title 6, United States code, section 202(3) and (4), and 557), having expressly consented to the defendant's reapplication for admission into the United States; in violation of Title 8, United States Code, Section 1326.

And the complainant states that this complaint is based on the attached statement of facts, which is incorporated herein by reference.

Senior Border Patrol Agent

SWORN TO BEFORE ME AND SUBSCRIBED IN MY PRESENCE, THIS 27th DAY OF FEBRUARY 2008.

PETER C. LEWIS
U.S. MAGISTRATE JUDGE

UNITED STATES OF AMERICA

v.

Francisco AVILA-Graciano

STATEMENT OF FACTS

The complainant states that this complaint is based upon the statements of the apprehending Border Patrol Agent, D. Kruger, that the Defendant, Francisco AVILA-Graciano, was found and arrested on February 25, 2008, east of the Calexico, California, West Port of Entry.

On February 25, 2008, at approximately 5:30 P.M., Agent Kruger was performing his assigned Border Patrol Duties near the Calexico, California, West Port of Entry. Agent Kruger observed an individual, later identified as Francisco AVILA-Graciano, make an illegal entry into the United States by climbing over the International Boundary fence with Mexico, near 353 East First Street, Calexico, California.

Agent Kruger responded to the area and searched for the illegal entrant. Agent Kruger located the illegal entrant and identified himself as a Border Patrol Agent. Agent Kruger questioned AVILA and determined he is a citizen of Mexico illegally in the United States. AVILA was arrested and transported to the Calexico, California Border Patrol Station for further processing.

Records checks revealed AVILA has been previously deported on July 6, 2004, and has an extensive criminal record.

There is no evidence AVILA has sought nor received permission from the Attorney General of the United States or the Secretary of the Department of Homeland Security to re-enter the United States.